

(e) *Pre-Hearing conference.* At any time before the hearing, the CMS hearing officer may call a pre-hearing conference if he or she believes that a conference would more clearly define the issues. At the pre-hearing conference, the hearing officer may establish the briefing schedule, sets the hearing date, and addresses other administrative matters. The hearing officer will issue an order reflecting the results of the pre-hearing conference.

(f) *Date of hearing.* The hearing officer sets a date for the hearing that is no more than 60 calendar days following the receipt of the request for a hearing.

(g) *Conduct of hearing.* (1) The hearing is open to both parties, CMS and the OPO.

(2) The hearing officer inquires fully into all the matters at issue and receives in evidence the testimony of witnesses and any documents that are relevant and material.

(3) The hearing officer provides the parties with an opportunity to enter an objection to the inclusion of any document. The hearing officer will consider the objection and will rule on the document's admissibility.

(4) The hearing officer decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

(5) The hearing officer rules on the admissibility of evidence and may admit evidence that would be inadmissible under rules applicable to court procedures.

(6) The hearing officer rules on motions and other procedural items.

(7) The hearing officer regulates the course of the hearing and conduct of counsel.

(8) The hearing officer may examine witnesses.

(9) The hearing officer takes any action authorized by the rules in this subpart.

(h) *Parties' rights.* CMS and the OPO may:

(1) Appear by counsel or other authorized representative, in all hearing proceedings.

(2) Participate in any pre-hearing conference held by the hearing officer.

(3) Agree to stipulations as to facts which will be made a part of the record.

(4) Make opening statements at the hearing.

(5) Present relevant evidence on the issues at the hearing.

(6) Present witnesses, who then must be available for cross-examination, and cross-examine witnesses presented by the other party.

(7) Present oral arguments at the hearing.

(i) *Hearing officer's decision.* The hearing officer renders a decision on the appeal of the notice of de-certification within 20 business days of the hearing.

(1) *Reversal of de-certification.* If the hearing officer reverses CMS' determination to de-certify an OPO in a case involving the involuntary termination of the OPO's agreement, CMS will not terminate the OPO's agreement and will not de-certify the OPO.

(2) *De-certification is upheld.* If the de-certification determination is upheld by the hearing officer, the OPO is de-certified and it has no further administrative appeal rights.

(j) *Extension of agreement.* If there is insufficient time prior to expiration of an agreement with CMS to allow for competition of the service area and, if necessary, transition of the service area to a successor OPO, CMS may choose to extend the OPO's agreement with CMS.

(k) *Effects of de-certification.* Medicare and Medicaid payments may not be made for organ procurement services the OPO furnishes on or after the effective date of de-certification. CMS will then open the de-certified OPO's service area for competition as set forth in § 486.316(c).

#### **§ 486.316 Re-certification and competition processes.**

(a) *Re-Certification of OPOs.* An OPO is re-certified for an additional 4 years and its service area is not opened for competition when the OPO:

(1) Meets two out of the three outcome measures requirements at § 486.318; and

(2) Has been shown by survey to be in compliance with the requirements for certification at § 486.303, including the

## § 486.318

## 42 CFR Ch. IV (10–14 Edition)

conditions for coverage at §§ 486.320 through 486.348.

(b) *De-certification and competition.* If an OPO does not meet two out of the three outcome measures as described in paragraph (a)(1) of this section or the requirements described in paragraph (a)(2) of this section, the OPO is de-certified. If the OPO does not appeal or the OPO appeals and the reconsideration official and CMS hearing officer uphold the de-certification, the OPO's service area is opened for competition from other OPOs. The de-certified OPO is not permitted to compete for its open area or any other open area. An OPO competing for an open service area must submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO took to overcome them, and the results.

(c) *Criteria to compete.* To compete for an open service area, an OPO must meet the criteria in paragraph (a) of this section and the following additional criteria:

(1) The OPO's performance on the donation rate outcome measure and yield outcome measure is at or above 100 percent of the mean national rate averaged over the 4 years of the re-certification cycle; and

(2) The OPO's donation rate is at least 15 percentage points higher than the donation rate of the OPO currently designated for the service area.

(3) The OPO must compete for the entire service area.

(d) *Criteria for selection.* CMS will designate an OPO for an open service area based on the following criteria:

(1) Performance on the outcome measures at § 486.318;

(2) Relative success in meeting the process performance measures and other conditions at §§ 486.320 through 486.348;

(3) Contiguity to the open service area.

(4) Success in identifying and overcoming barriers to donation within its own service area and the relevance of those barriers to barriers in the open area. An OPO competing for an open service area must submit information and data that describe the barriers in its service area, how they affected organ donation, what steps the OPO

took to overcome them, and the results.

(e) *No OPO applies.* If no OPO applies to compete for a de-certified OPO's open area, CMS may select a single OPO to take over the entire open area or may adjust the service area boundaries of two or more contiguous OPOs to incorporate the open area. CMS will make its decision based on the criteria in paragraph (d) of this section.

[71 FR 31046, May 31, 2006, as amended at 78 FR 75199, Dec. 10, 2013]

### ORGAN PROCUREMENT ORGANIZATION OUTCOME REQUIREMENTS

#### § 486.318 Condition: Outcome measures.

(a) With the exception of OPOs operating exclusively in noncontiguous States, Commonwealths, Territories, or possessions, an OPO must meet two out of the three following outcome measures:

(1) The OPO's donation rate of eligible donors as a percentage of eligible deaths is no more than 1.5 standard deviations below the mean national donation rate of eligible donors as a percentage of eligible deaths, averaged over the 4 years of the re-certification cycle. Both the numerator and denominator of an individual OPO's donation rate ratio are adjusted by adding a 1 for each donation after cardiac death donor and each donor over the age of 70;

(2) The observed donation rate is not significantly lower than the expected donation rate for 18 or more months of the 36 months of data used for re-certification, as calculated by the SRTR;

(3) At least 2 out of the 3 following yield measures are no more than 1 standard deviation below the national mean, averaged over the 4 years of the re-certification cycle:

(i) The number of organs transplanted per standard criteria donor, including pancreata used for islet cell transplantation;

(ii) The number of organs transplanted per expanded criteria donor, including pancreata used for islet cell transplantation; and

(iii) The number of organs used for research per donor, including pancreata used for islet cell research.